

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6051 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SHUMAR BHIMJI MAHESHWARI BROTHER OF DETENUE KHAMU BHIMJ

Versus

DISTRICT MAGISTRATE

Appearance:

MR AR THACKER for Petitioner

MR UDAY BHATT LD. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 17/10/2000

ORAL JUDGEMENT

1. The petitioner has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of the order of detention dated 15.6.2000, Annexure-A, in respect of petitioner passed by the respondent no. 1 in exercise of

his powers conferred upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of grounds of detention, the detenu is a bootlegger within the meaning of sec. 2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at a subjective satisfaction, the detaining authority has placed reliance on four prohibition cases lodged in Gandhidham Police Station. He has also placed reliance on the statements of four anonymous witnesses whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. As per the papers of grounds of detention, such statements were verified by In-charge Sub-Divisional Police Officer, Eastern Region, Anjar on 11.5.2000. On 15.6.2000 the order of detention came to be passed by the respondent no. 1 and that order has been challenged in this writ petition.

3. Though rule has been served upon all the respondents, they have not filed affidavits-in-reply, in reply to main writ petition, controverting the grounds of attack mentioned in the memo of petition.

4. Mr AR Thakkar learned advocate for the petitioner has argued that in this case, the detaining authority has placed reliance on the statements of four anonymous witnesses, whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. He has argued that this privilege has been exercised wrongly because the statements have not been verified by the detaining authority himself. Looking to the statements, that statements appear to have been verified by some In-charge Sub-Divisional Police Officer, Eastern Region, Anjar and, therefore, the exercise which was required to be done by the detaining authority himself, has not been done by him, but it has been done by somebody else and, therefore, privilege claimed by the detaining authority is wrongly exercised and not in accordance with law. Therefore, the order of detention is vitiated by violation of Article 22(5) of the Constitution of India.

5. In view of what is stated hereinabove, this petition is allowed. The impugned order of detention dated 15.6.2000 passed by respondent no. 1 in respect of detenu is set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody for any criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)
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